

October 1, 2007 - Regular Town Council Meeting

At a Regular Meeting of the Town Council of the Town of Middletown, RI, held at the Middletown Town Hall on Monday, October 1, 2007 at 6:00 P.M.

Council President Paul M. Rodrigues, Presiding

Vice Chair Shirley R. Mello

Councillor Barbara A. Barrow

Councillor Louis P. DiPalma

Councillor M. Theresa Santos

Councillor Edward J. Silveira, Jr., Members Present

Councillor Robert J. Sylvia, Absent

EXECUTIVE SESSION

- 1. Pursuant to the provisions of RIGL, Sections 42-46-2., 42-46-4. and 42-46-5. (a) (1) personnel (Town Administrator, Police Chief).**

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to recess this meeting at 6:01 P.M. to meet in executive session pursuant to docket item entered above.

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to reconvene this meeting in open session at 7:05 P.M.

ACTING AS A BOARD OF LICENSE COMMISSION

Councillor Silveira disqualified himself from acting on the next four (4) items of business, #1, 2, 3, 4 due to a possible conflict of interest, business related.

1. Public Hearing (Advertised; Abutters notified)

Application of Wiggins Enterprises, Inc., dba The Glass Onion, holder of a Retailer's Class BV Alcoholic Beverage License for premises located at 909 East Main Road, Middletown, to TRANSFER LOCATION of said license to 1258 West Main Road, Middletown.

Public Hearing was declared open.

Robert Silva, Esquire, 1100 Aquidneck Avenue, representing the applicant, addressed the Board. Mr. Silva referenced the proposal of recreating the Glass Onion restaurant to a new premise. He is aware there is a concern/objection filed by the owners of the "The Green". Attorney Silva reviewed the application of Wiggins Enterprises and issued a plan to be placed on file as Exhibit 1. Mr. Silva reviewed said plan noting the building (the premise) will be placed far away from the day care/kindergarten, meeting the requirement of Rule 41 (200' Foot Rule) cited in the rules of The Department of Business Regulation, Commercial Licensing Regulation & Liquor Control Administration.

Town Solicitor Frank Holbrook reviewed the objection from Bright Ideas, Inc., (The Green) which is a properly licensed kindergarten. Mr. Holbrook takes the position that the premises is the lot line so, it would fall short of enough area to proceed. Council does not have jurisdiction.

Council requests clarification of premises/lot lines.

Jay Lynch, Esquire, 97 John Clarke Road, representing Bright Ideas Inc., noted that he agrees with Mr. Holbrook. Mr. Lynch believes you measure from the licensed building. Council does not have jurisdiction to grant the license. The parking lot is used exclusively for the school and the buses.

Robert Kielbasa, 124 Taylor Road, Portsmouth, noted that placing this establishment here will have a negative impact on the children.

There being no other persons present desiring to be heard on this matter, public hearing was declared closed.

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to continue this matter to October 15, 2007 the next regular meeting of the board.

Five-minute recess

2. Application of EA & EM, LLC, dba Aquidneck Restaurant and Pizzeria holder of a Retailer's Class BV Alcoholic Beverage License for premises located at 27 Aquidneck Avenue, Middletown, to TRANSFER said license to AQ, Inc., dba Aquidneck Restaurant and Pizzeria, for use at the same premises. (Requires advertising for public hearing)

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to receive said application, advertise same for a public hearing to be held at the November 5, 2007 regular meeting of the board.

3. Application of Saigon Cafe, Inc., dba Saigon Cafe, 823 West Main Road, Middletown, holder of a Retailer's Class BL Alcoholic Beverage License, to UPGRADE said license to a Class BV for use at the same premises. (Requires Advertising for Public Hearing)

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to receive said application, advertise same for a public hearing to be held at the November 5, 2007 regular meeting of the board.

**4. Applications received from the following named persons, firms or corporations for RENEWAL of Alcoholic Beverage Licenses for the 2007-2008 licensing year. (Requires Advertising for Public Hearing)
(See attached list)**

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to receive said applications, advertise same for a public hearing to be held at the November 5, 2007 regular meeting of the board.

CONSENT CALENDAR

- 1. Approval of Minutes - Regular Meeting, August 20, 2007.**

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to approve said minutes.

- 2. Approval of Minutes - Special Meeting, August 27, 2007.**

On motion of Vice Chair Mello, duly seconded, it was voted

unanimously to approve said minutes.

3. Approval of Minutes - Regular Meeting, September 4, 2007.

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to approve said minutes.

4. Communication of Tax Assessor, with enclosures, re: Cancellation of taxes for certain Middletown taxpayers.

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to receive said communication.

5. Resolution of the Council, re: Authorizing cancellation of taxes for certain Middletown taxpayers.

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to pass said resolution.

6. Communication of Tax Collector, with enclosures, re: Cancellation of taxes for certain Middletown taxpayers.

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to receive said communication.

7. Resolution of the Council, re: Authorizing cancellation of taxes for certain Middletown taxpayers.

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to pass said resolution.

8. Memorandum of Finance Director, with enclosures, re: Proposed Refuse and Recycling Fund Budget. (Requires Advertising for Public Hearing)

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to receive said memorandum and advertise same for public hearing to be held at the November 5, 2007 special meeting of the Council.

9. Notices (2) of Public Hearing received from Zoning Board of Review, re: 1) Application of Newport Holding, LLC (owner) Newport Landings, LLC (applicant) for a special use permit to allow construction of an accessory administration and utility building on real estate located at Coddington Highway, Lot 1 (portion), TAP 107SW, and 2) Application of Diane M. Patrella and Daniel P. Titus for a variance to construct a second floor addition and a rear porch with less than required setbacks on real estate located at 383 Paradise Avenue, Lot 7, TAP 121.

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to receive said notices.

10. Communication of the Honorable Donald L. Carcieri, Governor, State of Rhode Island, re: Community Block Grant award.

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to receive said communication.

11. Communication of Megan Daughan, Finance Coordinator, Safety Town Program, re: Appreciation for support of Safety Town program.

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to receive said communication.

12. Application of Rui F. Almeida, dba Doughboy's Kitchen, Fall

River, MA, for RENEWAL of Industrial Caterer's License (Mobile Food Service Unit) for the 2007-2008 licensing year.

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to grant said license renewal.

13. Application of AQ, Inc., dba Aquidneck Restaurant & Pizzeria, 27 Aquidneck Avenue, for Victualling House License - Additional Hours of Operation - for the 2007-2008 licensing year. (NEW) (Requires Advertising for Public Hearing)

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to receive application, advertise same for a public hearing to be held at the November 5, 2007 regular meeting of the Council.

14. Application of 7-Eleven, Inc., dba 7-Eleven #26211J, 939 West Main Road, for Victualling House License - Additional Hours of

Operations - for the 2007-2008 licensing year. (NEW) (Requires Advertising for Public Hearing)

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to receive application, advertise same for a public hearing to be held at the November 5, 2007 regular meeting of the Council.

15. Applications received from the following named persons, firms or corporations for RENEWAL of Victualling House Licenses, Additional Hours of Operation, for the 2007-2008 licensing year. (Requires Advertising for Public Hearing) (See attached list)

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to received said applications, advertise same for a public hearing to be held at the November 5, 2007 regular meeting of the Council.

TOWN COUNCIL

- 1. Presentation to the Town by Joseph Matose - Original painting to honor parents.**

Middletown resident Joseph Matose presented an original drawing, in memory of his parents, to the Council. The drawing showing the area of St. Georges to Second and Third Beaches and the Norman Bird Sanctuary, will be displayed at the Town Hall.

- 2. Application of Wiggins Enterprises, Inc., dba Glass Onion, 1258 West Main Road, for Victualling House License for the 2007 - 2008 licensing year. (NEW)**

Councillor Silveira disqualified himself from acting on this matter due to a possible conflict of interest, business related.

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to continued said license to October 1, 2007 regular meeting of the Council.

3. Application of KM Gladding Excavating, Jamestown, for a Drain Layer's License for the 2007-2008 licensing year. (NEW)

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to grant said license.

4. Applications (2) for Special Events Permits received from the following named persons, firms or corporations: 1) The Breakers Marathon, Purgatory Road, Tuckerman Avenue, Sachuest Point Road, Hanging Rocks Road, Indian Avenue, Peckham Avenue, Wapping Road, Mitchell's Lane, Wyatt Road, Turner Road, Green End Avenue, Paradise Avenue and 2) Family Motor Coach Association (FMCA)/Cape Codders Chapter, Second Beach.

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to grant said permits.

5. An Ordinance of the Town of Middletown (Second Reading)

**An ordinance in amendment to the Town Code of the Town of Middletown, Title III, Administration, Chapter 36, Fee Schedule.
(Certain License Fees)**

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to adopt said ordinance, as amended.

6. Memorandum of Assistant Town Planner, re: Request for approval for submission of 2008 EPA Brownfields Grants.

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to receive said memorandum and grant approval of submission of 2008 EPA Brownfield Grants.

7. Memorandum of Assistant Town Planner, re: Request for 2007 DEM Riparian Restoration Grant award and authorize Town match for each.

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to accept said grants and allocate appropriate resources as the Town match.

8. Public Hearing (Advertised, Abutters Notified)

Amendment to the Town's Comprehensive Community Plan (First Reading)

Amendment to Town's Comprehensive Community Plan, Future Land Use Plan, proposing to designate as High Density Residential, TAP 102, Lot 2 - Landings (former Anchorage Navy Housing) and TAP 101, Lot 22 - Coddington Cove Navy Housing.

Public Hearing was declared open.

Assistant Town Planner Samantha Hogan addressed the Council explaining and reviewing this amendment. Ms. Hogan noted approval of this amendment will bring this area in compliance with the Comprehensive Community Plan.

Elsie Nunes, 13 Hart Street, addressed the Council noting that this amendment will bring in more traffic to the area. Ms. Nunes does not want to listen to more noise.

Tom Nunes, 13 Hart Street, addressed the Council expressing concern with the amount of traffic and noise that this amendment will create in this area.

There being no other persons present desiring to be heard on this matter, public hearing was declared closed.

On motion Vice Chair Mello, duly seconded, it was voted unanimously to receive said Comprehensive Community Plan Amendment on its first reading.

9. Public Hearing (Advertised, Abutters Notified)

An Ordinance of the Town of Middletown (First Reading)

An ordinance in amendment to the Town Code of the Town of Middletown, Chapter 152, Zoning Code, proposing to change the zoning classification of Lot 2, TAP 102 - Landings (former Anchorage Navy Housing) from classification of Public (P) to Residential Multi-Family (RM)

Public Hearing was declared open.

There being no persons present desiring to be heard on this matter,

public hearing was declared closed.

On motion Vice Chair Mello, duly seconded, it was voted unanimously to receive ordinance on its first reading.

10. Memorandum of Chairman, Middletown Planning Board, with enclosure, re: Proposed amendment to the Zoning Code of the Town of Middletown, changing text, Section 310.A. - Development Impact Review, Section 602 - Use Table and Section 603 - Dimensional Requirements. (Requires Advertising for Public Hearing)

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to receive said memorandum, to advertise said proposed amendment for a public hearing to be held at the November 19, 2007 regular meeting of the Council.

11. Memorandum of Councillor Louis P. DiPalma, with enclosures, re: Proposed amendment to Zoning Code of the Town of Middletown

**relative to Community Residences and Family Day Care Homes.
(Requires Advertising for Public Hearing and Planning Board
Recommendation)**

**On motion of Vice Chair Mello, duly seconded, it was voted
unanimously to receive said memorandum, to advertise said
proposed amendment for a public hearing to be held at the November
19, 2007 regular meeting of the Council.**

**12. Memorandum of Police Chief, re: Seeking approval to request
zoning variance to allow separate entrance and exit at new Police
Station.**

**On motion of Vice Chair Mello, duly seconded, it was voted
unanimously to receive said memorandum.**

**Police Chief Pesare addressed the Council requesting permission to
seek zoning relief from the Town, in accordance with, section 720.**

Chief Pesare noted this is a safety issue and requests to have one entrance and one exit (2 driveways) at the opposite ends of the building.

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to approve said request to seek zoning relief.

13. Communication of Alice May Curran, 429 Forest Avenue, re: Request to address the Council concerning access road from Forest Avenue to Buck Road.

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to receive said communication.

Alice Curran, 429 Forest Avenue, addressed the Council noting her concern of the proposed access road from Forest Avenue to Buck Road. Mrs. Curran noted the Bay Ridge subdivision is advertised as a “Gated Community and this creates a hazardous condition to the

area.

Gail Greenwood, 308 Forest Avenue, agrees with Mrs. Curran. Ms. Greenwood inquired also about the traffic study for this area noting it should not be done until “Bay Ridge” is completed.

Town Administrator Kempen responded that the study is complete and a special meeting needs to be scheduled for review.

14. Memorandum of Finance Director, re: with enclosures, re: Lease Purchase Agreement for refuse totes.

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to receive said memorandum.

15. Resolution of the Council, re: Approval of lease agreement for

refuse totes.

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to pass said resolution.

16. Memorandum of Town Administrator, re: PAYT issues - 1) disabled residents eligible for door-to-door service and 2) courtesy bag with initial delivery of each tote.

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to receive said memorandum.

1. Disabled residents eligible for door-to-door service

Town Administrator Kempen noted that there will be an annual application for this process. Taxpayers, who apply for assistance,

must supply either a handicap placard or a signed note from their doctor in order to receive door-to-door service.

Vice Chair Mello moved, and it was duly seconded, to continue this matter for additional information.

Town Administrator Kempen noted the time constraints of this issue.

Vice Chair Mello withdrew her motion.

On motion of Councillor DiPalma, duly seconded, it was voted unanimously to move forward with the disable resident eligible for door-to-door service

2. Courtesy bag with initial delivery of each tote

Town Administrator Kempen reviewed the process pertaining to the courtesy bags, with the initial delivery of the totes.

On motion of Councillor Silveira, duly seconded, it was voted unanimously to support the inclusion of a 33-gallon bag with initial delivery of each tote.

17. Memorandum of Finance Director, with enclosures, re: Contract - RI Resource Recovery Corporation.

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to receive said memorandum.

18. Resolution of the Council, re: Approval of contract with RI Resource Recovery Corporation.

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to pass said resolution.

19. Memorandum of Finance Director, with enclosures, re: Surplus property.

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to receive said memorandum.

20. Resolution of the Council, re: Declaring certain property surplus and authorizing its disposition.

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to pass said resolution.

21. Memorandum of Finance Director, re: Borrowing - Clean Water Finance Agency.

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to receive said memorandum.

22. Resolution of the Council, re: Approving the Financing of Improvements and the Issuance of Wastewater System Revenue Bonds.

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to pass said resolution.

23. Memorandum of Town Administrator, with enclosures, re: Summary of bids for Dunlap Wheeler Park Water Hydrant.

Vice Chair Mello disqualified herself from acting on the next two (2) items of business, #23 & 24, due to a possible conflict of interest.

On motion of Councillor Silveira, duly seconded, it was voted unanimously to receive said memorandum.

24. Resolution of the Council, re: Award of contract for Dunlap Wheeler Park Water Hydrant.

On motion of Councillor Silveira, duly seconded, it was voted unanimously to pass said resolution.

25. Memorandum of Councillor Louis P. DiPalma, with enclosures, re: Information Technology Advisory Committee -Survey Request.

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to receive said memorandum.

Councillor DiPalma his memorandum noting the Technology Advisory Committee would like to move forward with the survey.

On motion of Councillor DiPalma, duly seconded, it was voted unanimously for the Town Administrator to move forward with survey, to obtain the data collected, have the survey place on line by October 8, 2007 and completed within one month.

26. Appointment of one (1) member to the Information Technology Advisory Committee for a term expiring September 2009.

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to reappoint John T. Fox to said board, for a term expiring in September 2009.

27. Appointment of one (1) member to the Middletown Board of Canvassers to complete a term expiring in March 2008. (Bi-partisan Board)

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to appoint Mary Hannon to said board, to complete a term expiring in March 2008.

28. Communication of Lynda M. Bronaugh, Middletown, re: Resignation from Library Board of Trustees.

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to receive said communication and accept said resignation with regret.

29. Appointment of one (1) member to the Middletown Public

Library Board of Trustees to complete a term expiring in September 2008.

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to appoint Joyce H. Morgenthaler to said board, to complete a term expiring in September 2008.

PUBLIC FORUM SESSION

Pursuant to Rule 23 of the Rules of the Council, Citizens may address the town on one (1) subject only, said subject of substantive Town business, neither discussed during the regular meeting nor related to personnel or job performance. Citizens may speak for no longer than five (5) minutes and must submit a public participation form to the Council Clerk prior to the start of the meeting.

Wendy J. W. Marshall, CMC

Town Clerk

No one addressed the Council during this session.

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to recess this meeting at 8:50 P.M. to meet in executive session pursuant to RIGL, Sections 42-46-2., 42-46-4. and 42-46-5. (a) (1) personnel (Town Administrator, Police Chief).

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to reconvene this meeting in open session at 10:36 P.M.

Councillor Silveira moved, and it was duly seconded, to approve the same salary increase received by non-union employees, July 16th, 2007, motion amended by Councillor DiPalma, duly seconded, to approve a lesser salary increase received by non-union employees; Councillor Silveira and DiPalma voted YES to said motion, as amended; Council President Rodrigues, Vice Chair Mello, Councillors Barrow and Santos vote NO; motion Failed to Pass.

On motion of Councillor Santos, duly seconded, it was voted to re-evaluate in six months; Council President Rodrigues, Vice Chair Mello, Councillors Barrow and Santos voted YES to said motion; Councillor DiPalma and Silveira voted NO.

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to seal the minutes of the executive session pursuant to Section 42-46-7. RIGL.

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to adjourn this meeting at 10:39 P.M.

Wendy J.W. Marshall, CMC

Council Clerk